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UNITED STATES

EX-36-1979

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 651

**MEDIAN LINES LIMITED and UNIVERSAL CARGO CARRIERS, INC.,
Petitioners,**

vs.

**ZACHARIAH RHODES,
Respondent.**

BRIEF OF PETITIONERS

GEORGE F. WOOD
510 Van Antwerp Building
P. O. Box 2245
Mobile, Alabama 36601
Attorneys for Petitioners

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 661

**HELLENIC LINES LIMITED and UNIVERSAL CARGO CARRIERS, INC.,
Petitioners,**

vs.

**ZACHARIAS RHODITIS,
Respondent.**

BRIEF OF PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals, Fifth Circuit, is reported as **Hellenic Lines Limited and Universal Cargo Carriers, Inc., Appellants v. Zacharias Rhoditis, Appellee**, 412 F. 2d 919.

⁴ The District Court opinion is reported at 273 F. Supp. 248.

JURISDICTION

The jurisdiction of this Honorable Court is invoked upon writ of certiorari granted to petitioner on January 12, 1970, under the provisions of Title 28, Section 1254(1), United States Code.

STATUTE INVOLVED

The principal statute involved is the Jones Act (41 Stat. 1007, Title 46, Section 688, United States Code), as follows:

“Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.”

QUESTIONS PRESENTED

I

Were the lower courts correct in applying the Jones Act to an action by a Greek seaman, himself a resident of Greece, against a Greek corporate owner-operator for injury occurring aboard a Greek flag vessel, solely on the ground that the majority stockholder of the corporate shipowner resided in the United States, notwithstanding that he is a Greek citizen and is designated as a representative of Greece to the United Nations?

II

Were the lower courts correct in finding that the Greek flag of the HELLENIC HERO was a "Flag of Convenience" when the corporation was formed in Greece, by Greek citizens, in 1934, has continued to exist with home offices in Greece since that time; when all stockholders are Greek citizens; when two of its four trade routes do not touch the United States; when all of its crewing takes place in Greece and only Greek seamen are employed and when most of its vessels call in Greece where they are supplied and repaired?

III

Were the courts correct after making a determination that the Greek seaman (Plaintiff below) had a forum accessible to him in Greece to then add a second complete remedy under the Jones Act?

STATEMENT OF THE CASE

Respondent (libelant below) was born in Greece (A. 18-19, 191), is a Greek national (A. 18, 75), and at all pertinent times resided in Greece (A. 75). He signed on the SS HELLENIC HERO in Heraclion (Iraklion) Greece for a voyage commencing in Greece and ending in Greece (A. 18, 20). The contract of employment is in the form prescribed by the government of Greece following negotiations with Greek unions and ratification by Greek shipowners (A. 19-20, 73-4). The employment of all Greek seamen for service on Greek vessels is pursuant to this same collective agreement between the unions and the shipowners (A. 73-4).

Hellenic Lines Limited is, and was, the operator of the HELLENIC HERO at all pertinent times, and was the employer of Rhoditis (A. 18, 21, 67). Title to the HELLENIC HERO is in Universal Cargo Carriers, Inc., a wholly owned Panamanian subsidiary of Hellenic Lines Limited (A. 18, 65).

Hellenic Lines Limited is a pre-World War II company organized in Greece in 1934 and has continued to own and operate vessels in several trades since that time (A. 18, 68, Resp. Exhibit 2, at trial, Petitioner's Exhibit 2, A. 113-140). Some of its trade routes are to and from certain American ports; some do not touch American ports (A. 71-2, 136). All its trade routes do emanate from the Mediterranean, either from or in close proximity to Greece (A. 71-2). All of its stockholders are Greek citizens including its majority stockholder, Pericles Callimanopoulos (A. 18, 68).

The HELLENIC HERO is, and always had been, duly registered as a Greek flag vessel and operated as such (A. 19, 75). She and her sister ships call regularly at Greek

ports; employ Greek seamen only (A. 66, 73, 86-7); and are regularly supplied and repaired in Greece (A. 81-2).

Respondent Rhoditis was injured aboard the HELLENIC HERO in the Port of New Orleans on August 3, 1965 (A. 9). He was initially treated for a period of less than two weeks in New Orleans and was returned to his home in Greece at the expense of owners (A. 24-5, 75-6). The remainder of his treatment and recuperation period took place in Greece (A. 25, 76). At the time of trial he was in Greece or sailing from Greek ports (A. 95).

Hellenic Lines Limited is domiciled in Greece, has a large home office in Piraeus, Greece, is subject to the laws of Greece and stands ready to respond to the provisions of Greek law to the benefit of Rhoditis (A. 25, 69, 77-9, 81). As a matter of fact it has already partially responded in that all medical expenses have been paid by petitioner in Greece and a portion of the other benefits accruing under Greek law have been paid by Hellenic Lines Limited and accepted by Rhoditis (A. 76, 92-3).

Pericles Callimanopoulos is the majority stockholder of Hellenic Lines Limited; owning more than 95% of the stock of this corporation. Mr. Callimanopoulos is a Greek national who was the organizer of Hellenic Lines in 1934 (A. 68). He has resided in the United States since 1945 as a resident alien and treaty trader; and, since 1963, has been a representative of Greece to the United Nations (A. 68-9).

Respondent (libelant below) did not plead, nor seek to prove, provisions of the Greek law covering an injury under the circumstances of this case. Instead, libelant filed a motion asking the District Court to declare that the Jones Act applied (A. 58). The shipowner (respondent below) filed a motion to dismiss in the District Court based upon the express ground that American law, in-

cluding the Jones Act, did not apply to this situation and since libelant did not plead Greek law, there was no area of operation for the court (A. 15-17). The motion was denied by the District Court (A. 58) and subsequently the District Court expressly ruled that the Jones Act was applicable to the circumstances of this case (A. 99).

Issue was joined including a defense that raised the same question as had been raised on the motion to dismiss, i. e., that American law did not apply and libelant had not pled the provisions of the Greek law (A. 61 at 63). After trial, the District Court entered a judgment for the libelant which was affirmed on appeal (A. 99-100, 100-112).

CONFLICTING DECISION

The identical question presented to the District Court and to the Court of Appeals in this cause, was before the Second Circuit in 1966 in the case of **Tsakonites v. Trans Pacific Carriers Corp. and Hellenic Lines Limited**, 368 F. 2d 426, cert. den. 386 U. S. 1007. Like Rhoditis, Tsakonites was a citizen and resident of Greece and was injured on an Hellenic Lines vessel in a United States port. The Second Circuit affirmed the dismissal of the action holding expressly that American law did not apply. Tsakonites then pursued his remedy in Greece and recovered the benefits accorded him under the laws of Greece (Appendix I to this brief). In its affirmance, the Second Circuit based its decision on the paramount importance of the "law of the flag":

"Wherever, as here, there are various factors to be weighed for and against jurisdiction, the decision must be controlled by the more weighty. . . . The Supreme Court has given no indication that the law of the flag (when not a flag of convenience) is still not to be considered of paramount importance."

PROPOSITIONS OF LAW

I

In a Civil Controversy Between a Foreign Seaman and His Foreign Shipowner Employer, the Vessel's Flag Is the Determinant of the Law to Be Applied in the Absence of Some Heavy Counterweight.

II

The Only Effective Counterweights to the "Law of the Flag" Are (1) American Citizenship or Domicile of Seaman; and (2) American Citizenship (Allegiance) of Vessel Owner-Employer, Since These Considerations Affect the National Interest.

III

Substantial Commerce in United States Ports, Residence of Alien Majority Stockholder, Place of Accident, Inaccessibility of Greek Forum or Possible Greater Financial Reward Under American Law, Are Transitory or Secondary Elements. None Is a Sufficient Counterweight to Overbalance the Law of the Flag, and the Law of Greece Applies.

IV

Since American Law Does Not Govern and Greek Law Was Neither Plead Nor Proven, There Was No Area of Action for the Court and the Motion to Dismiss Should Have Been Granted.

ARGUMENT

I

In a civil controversy between a foreign seaman and his foreign shipowner employer, the vessel's flag is the determinant of the law to be applied in the absence of some heavy counterweight.

The starting point for all controversies involving the law to be applied to an action between foreign citizens for injury aboard ship is the case of *Lauritzen v. Larsen*, 345 U. S. 571. There the Court organized and recorded the criteria to "resolve conflicts between competing laws" and reviewed in logical sequence the comparative values of each of the elements as established in the Admiralty. It was pointed out that the criteria "appear to be arrived at from weighing of the significance of one or more connecting factors between the shipping transaction regulated and the national interest served by the assertion of authority" (345 U. S. 583) (emphasis supplied).

There then followed the listing and weighing of the seven elements to be considered. These seven elements (characterized by the Fifth Circuit as the "seven immortal pillars of Lauritzen") would seem to include almost every conceivable circumstance and, indeed, only in the case at bar does there seem to be any serious effort to escape its confines. Every case cited in the District Court and the Court of Appeals as authority to depart from the measuring stick of *Lauritzen* is, in reality, squarely within the seven elements. This conclusion will be demonstrated in the argument under Proposition II of this brief.

In assigning weight to be accorded each element, this Honorable Court, in *Lauritzen*, established three categories of elements. These were characterized by the Court as:

(1) The "prevailing" or "most venerable and universal" rule, or that which accords "cardinal importance to the Law of the Flag. This element governs unless a "heavy counterweight" appears.

(2) The second category, the "heavy counterweights," contain two elements:

(a) "The allegiance or domicile of the injured" and

(b) "The allegiance of the defendant shipowner."

(3) The third division established in Lauritzen could be described as the secondary or transitory elements, in that they are not controlling in the face of "the flag" and the "two heavy counterweights." This division includes (a) Place of the Wrongful Act, "of limited application to shipboard torts"; (b) Place of contract, usually "fortuitous"; (c) Inaccessibility of Foreign forum, perhaps "persuasive for exercising discretionary jurisdiction . . . but not persuasive as to the law by which it shall be judged"; and (d) Law of the Forum, there is "no justification for altering the law of a controversy just because local jurisdiction of the parties is attainable."

So then, there is established the prevailing, or *prima facie*, determinant as to the law to be applied. "The Law of the Flag." In reaching this conclusion in Lauritzen, this Court quotes from the earlier cases of U. S. v. Flores, 289 U. S. 137, 158, and Cunard Steamship Co. v. Mellon, 262 U. S. 100, 123:

"and so by comity it came to be generally understood among civilized nations that all matters of discipline and all things done onboard which affected only the vessel or those belonging to her, and did not involve the peace or dignity of the country, or the tranquility of the port, should be left by the local government to be dealt with by the authorities of the

nation to which the vessel belonged as the laws of that nation or the interests of its commerce should require This was but a repetition of settled American doctrine."

"These considerations are of such weight in favor of Danish and against American law in this case that it must prevail unless some heavy counterweight appears" (345 U. S. 585-6).

The validity of the "law of the flag" as the beginning point to control matters having to do with the internal affairs of a ship, was re-affirmed (in 1963) in **McCulloch, Chairman, etc. v. Sociedad Nacional de Marineros de Honduras**, 372 U. S. 10, when the Court was asked to apply the National Labor Relations Act to a Honduran flag vessel. The application of American law to matters between vessel owner and seaman was rejected in the following terms:

"Therefore, we find no basis for a construction which would exert United States jurisdiction over and apply its laws to the internal management and affairs of the vessels here flying the Honduran flag, contrary to the recognition long afforded them not only by our State Department but also by the Congress. In addition, our attention is called to the well-established rule of international law that the law of the flag state ordinarily governs the internal affairs of a ship" (372 U. S. 20-21).

The fact that it is the Jones Act with which we are concerned in the case at bar, does not affect the "venerable and universal" applicability of the law of the flag as it existed prior to the enactment of the Jones Act. That Act must be interpreted and applied in a manner consistent with long established maritime principles, including the importance accorded the law of the flag. **Romero v. International Terminal Operating Co., et al.**, 358 U. S. 354, 382.

The case of **Tjonaman v. A/S Glittre & Fearnley & Eger** (2 CA 1965), 340 F. 2d 290, cert. den. 381 U. S. 925, expresses it in this way:

"Since the Bartholomew decision the Supreme Court has re-emphasized the paramount importance of the law of the flag. **McCulloch v. Sociedad Nacionale, etc.**, 372 U. S. 10. This leaves no doubt that the starting point for weighing and evaluating of factors is consideration of that law. The court said, in **Lauritzsen**, 'perhaps the most venerable and universal rule of maritime law relevant to our problem is that which gives cardinal importance to the law of the flag'."

"The ultimate issue, then, is whether the substantiality of other existing factors establishing a connection with the United States is sufficient to outweigh the 'venerable and universal rule'."

Rhoditis was an employee of Hellenic Lines Limited, who operated the HELLENIC HERO. This vessel was, and is, registered under the Greek flag. Unless some "heavy counterweight" overbalances the law of the flag determinant, Greek law must apply.

II

The only effective counterweights to the "law of the flag" are (1) American citizenship or domicile of seaman; and (2) American citizenship (allegiance) of vessel owner-employer, since these considerations affect the national interest.

Notwithstanding many efforts by able counsel representing foreign seamen to establish sundry elements as "heavy counterweights", only two have ever succeeded. The two elements which have been deemed sufficient to outweigh and overbalance the ship's flag are (1) an affected seaman who is a citizen of or resident in the United

States; and (2) a vessel owner who is an American citizen. Under these two categories fall all the cases cited in the opinions of the District Court and Court of Appeals as authority for applying the Jones Act in the instant case.¹

Yet, it is undisputed that Rhoditis was a resident of Greece and that his employer, Hellenic Lines Limited, was a Greek corporation with no American citizens owning or controlling it, directly or indirectly.

When reference is had, once again, to Lauritzen to ascertain the basis for designating counterweights which overbalance the "law of the flag", the limitation to these two elements is understandable. Only those "connecting factors" will suffice to outweigh the flag which are such that "the national interest (will be) served by the assertion of (American) authority".

The national interest of the United States is served when its laws are applied to seamen who are American citizens or who reside in the United States. These are the precise classes of individuals for whose benefit the Jones Act was enacted. Lauritzen and Romero, *supra*. It fol-

¹ **Bartholomew v. Universe Tankships, Inc.**, 263 F. 2d 437 (2 C. A.) (All stockholders of the ultimate corporation were American citizens as were all corporate officers); **Pavlou v. Ocean Traders, etc.**, 211 F. Supp. 320 (Management of vessel in domestic corporation of New York); **Southern Cross S. S. Co. v. Firipis**, 285 F. 2d 651 (Involved American citizens as part owners and as management personnel). **Voyatzis v. National Shpg. & Trading Corp.**, 199 F. Supp. 920 (Stock of Panamanian corporate shipowner owned entirely by one American citizen); **Zielinski v. Empress Hondurena de Vapores**, 113 F. Supp. 93 (Stock of Honduran corporate shipowner owned by American corporation); **Urayic v. F. Jarka Co.**, 282 U. S. 234, and **Gambera v. Bergoty**, 132 F. 2d 414 (The latter two involved seamen who were American citizens or domiciliaries). The classic "flag of convenience" or "flag of necessity" or "runaway vessel" situation, by whatever name known, is that of American citizens acquiring ships and then procuring foreign registration in an effort to avoid American laws. But, always, there are American citizens.

lows logically that in the case of an injury to a seaman who is a citizen or domiciliary of the United States one of the intended group is affected, the national interest is involved, there arises a heavy counterweight, the law of the flag is overbalanced and the Jones Act is properly applied. This was the exception to the law of the flag under which the cases of **Uravic v. F. Jarka Co.**, 282 U. S. 234, and **Gambera v. Bergoty**, 132 F. 2d 414, fall. These were two of the cases cited below in support of application of the Jones Act to Rhoditis; but Rhoditis was a citizen and domiciliary of Greece.

The national interest of the United States is likewise served when the Jones Act is applied to American citizens who seek to evade the responsibilities imposed by virtue of their citizenship through the creation of paper foreign corporations to hide their American citizenship. It is in the national interest that laws enacted to govern the operation of its domestic corporations and individual citizens should not be frustrated by so simple a ruse. The case of **Southern Cross Steamship Co. v. Firipis**, 285 F. 2d 651 outlines the practice in these words:

“ ‘But it is common knowledge that in recent years a practice has grown, particularly among **American shipowners**, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against **American shipowners**, the obligations which our law places upon them.’ ” (Emphasis supplied.)

Perhaps the most famous of the “flag of convenience” cases wherein American citizens are concealed behind transparent foreign corporations is **Bartholomew v. Universe Tankships, Inc.**, 263 F. 2d 437, wherein the court finds not only American citizens hiding but also a resident seaman involved:

"... the practice in this type of case of looking through the facade of foreign registration and incorporation to the American ownership behind it is now well established. (Citing cases.)"

"This is essential unless the purposes of the Jones Act are to be frustrated by American shipowners intent upon evading their obligations under the law by the simple expedient of incorporating in a foreign country and registering their vessels under a foreign flag," . . .

"We also think the evidence overwhelmingly establishes that Bartholomew had sufficient presence and intent to be deemed a resident and domiciliary of the United States for the purpose of determining whether or not the Jones Act is applicable." (Emphasis supplied) (263 F. 2d 442.)

These then are the two overriding elements, the only two which have been sufficiently in the national interest to call for the interposition of American law to disputes arising between foreign seamen and foreign flag vessels. The case at bar falls under neither.

III

Substantial commerce in United States ports, residence of alien majority stockholder, place of accident, inaccessibility of Greek forum or possible greater reward under American law, are transitory or secondary elements. None is a sufficient counterweight to overbalance the law of the flag, and the law of Greece applies.

In the lower courts, Rhoditis urged the frequency of calls at U. S. ports, the residence of the alien-majority stockholder and the place of accident as sufficient to impose American law (The Jones Act) in contravention of the law of the flag. Two of these were directly considered in *Lauritzen* and relegated to secondary status while the

third was rejected by necessary implication. All fall within the category which may be characterized as transitory or "fortuitous" elements and none is such that the national interest would require the assertion of the authority of American law.

In *Lauritzen*, this Court discounted frequency of activity in U. S. ports as a decisive counterweight to the "law of the flag" in these words:

"Respondent places great stress upon the assertion that petitioner's commerce and contacts with the ports of the United States are frequent and regular, as the basis for applying our statutes to incidents aboard his ship. But the virtue and utility of seaborne commerce lies "in its frequent and important contacts with more than one country. If, to serve some immediate interest, the courts of each were to exploit every such contact to the limit of its power, it is not difficult to see that a multiplicity of conflicting and overlapping burdens would blight international carriage by sea. Hence, courts of this and other commercial nations have generally deferred to a non-national or international maritime law of impressive maturity and universality" (345 U. S. 581).

Vessels call where the cargo is. To permit a richer nation with greater commerce to impose its laws on the internal operations of foreign vessels by virtue of its volume of commerce would allow it unfairly to usurp through sheer wealth the perogatives of its sister nations.

The place of the injury was also accorded little weight in the determination of the law to be applied. In *Lauritzen* your Honors pointed out that "(T)he test of location of the wrongful act . . . is of limited application to shipboard torts because of the varieties of legal authority over waters she may navigate . . ." In *Romero* the Court expanded somewhat on the thought:

"To impose on ships the duty of shifting from one standard of compensation to another as the vessel passes the boundaries of territorial waters would be not only an onerous but also an unduly speculative burden, disruptive of international commerce and without basis in the expressed policies of this country." (358 U. S. 384.)

It is, of course, purely fortuitous that the accident happened in New Orleans rather than in some foreign port or on the high seas.

The third factor relied upon by Rhoditis to call for the imposition of American law, the residence of the alien majority stockholder in the United States, is quite similar in effect to the other factors of the fortuitous or transitory category. By its nature it belongs to the group of elements such as place of contract, place of accident and volume of commerce. Domicile or residence, on the one hand, and citizenship, on the other, are quite different concepts.

This distinction was recognized in *Lauritzen* when this Honorable Court designated the heavy counterweights in differing terms:

"3. Allegiance or Domicile of the Injured.— . . . each national has a legitimate interest that its nationals and permanent inhabitants be not maimed or disabled from self support . . . ". (345 U. S. 586.)

"4. Allegiance of the Defendant Shipowner.—A state 'is not debarred by any rule of international law from governing the conduct of its own citizens upon the high seas or even in foreign countries when the rights of other nations or their nationals are not infringed.' *Skiriotes v. Florida*, 313, U. S. 69, 73. *Steele v. Bulova Watch Co.*, 344 U. S. 280, 282, . . ." (Emphasis supplied.) (345 U. S. 587.)

The term "allegiance" must be equated with "citizenship", as this court did in the quotation set out above

under Element 4. On the other hand, "domicile" equates with "residence". The two terms were used in the disjunctive as applied to seamen but only "allegiance" with respect to the shipowner was considered significant.

The Jones Act was enacted for the benefit of "any seaman". This term, by construction, is restricted to a seaman who is a resident or citizen of the United States. This is consistent with the national interest. The statute is not punitive, but protective.

The exclusion of the word "domicile" from the phrase "Allegiance of the Defendant Shipowner" leaves the word "allegiance" unhampered and unrestricted by any concept of domicile. A citizen's allegiance is not conditioned on location. Domicile is always dependent upon location, coupled with intent. It must be presumed that the differing phraseology applied to seamen and shipowner was the result of thoughtful reflection by the Court.

Residency cannot be equated to citizenship. Citizenship is not dependent on locale, whereas residence is. Residence can be changed in an instant. It is transitory. The Court of Appeals bottomed its decision upon the residence of the majority stockholder and has thereby effected a change in that particular **Lauritzen** test which is founded upon citizenship (allegiance) as applied to the shipowner-employer. Should Mr. Callimanopoulos remove his residence to Canada, under this new counterweight initiated by the Court of Appeals, the laws of Canada would then instantly, albeit temporarily, apply to all seamen on all vessels operated by the corporation of which he is the dominant mind. If Mr. Callimanopoulos a week later moved to Mexico, the applicable law governing some 1100 seamen serving aboard Hellenic Lines vessels would again change. Such a profound effect cannot be justified by a simple change of residence of one who stands as the major stockholder of a corporation. These would indeed be shifting sands in

the conflicts of laws. It cannot be rationalized that international maritime law was, is or should be based on such a transitory concept of locale in such a delicate field of international relations with possible retaliation by one nation against another for unjustifiable interference with its citizens, corporations, vessels, seamen and foreign commerce.

Only passing reference is made in this brief to basic principles governing international relationships and the necessity of respect by the sovereign for the laws of other nations. Such lack of emphasis is, of course, not attributable to the unimportance of these concepts, for indeed they are at the heart of the matter before the Court, but out of an appreciation for the familiarity of the court with the principles. Lauritzen demonstrated an appreciation for the self-restraint which a nation, and certainly so great a nation as our own, must exercise in imposing its laws upon relationships between non-Americans:

“But in dealing with international commerce we cannot be unmindful of the necessity for mutual forbearance if retaliations are to be avoided; . . .”
(345 U. S. 571, 582).

Running through and forming the framework of each proposition and argument of this brief are those familiar principles which permit civilized nations to co-exist and each to exercise its proper jurisdiction over matters of its own concern.

That this Honorable Court is fully cognizant of these self-imposed boundaries is confirmed in *Romero v. International Terminal Operating Co.*, 358 U. S. 354, 382-3:

“. . . with due recognition of our self-regarding respect for the relevant interests of foreign nations in the regulation of maritime commerce as part of the legitimate concern of the international community. . . .”

"The controlling considerations are the interacting interests of the United States and of foreign countries, and in assessing them we must move with the circumspection appropriate when this court is adjudicating issues inevitably entangled in the conduct of our international relations."

The Court of Appeals relies upon Leonhard v. Eley, 151 F. 2d 409, as support for the general proposition that an alien acquires the national character of the place where he is domiciled even though he may not become a citizen thereof. With respect, this case is concerned only with the personal obligations of an individual to the nation where he is residing and where he is entitled to remain. Even if it be assumed that this case stands for the principle in the context as set out, it is not in point. It has no relation to the imposition of American law to contacts between the resident alien and another alien. It does not deal with foreign flag, foreign owned, shipboard accidents to foreign seamen under any type of tort statute, much less the Jones Act. It cannot be construed as controlling of the internal relationships between seamen and ships of a foreign corporate owner.

The vessel owner-employer is a Greek corporation, Hellenic Lines Limited, formed in Greece some 36 years ago. If the corporate veil be pierced, Mr. Callimanopoulos, the majority stockholder is a citizen of Greece. During at least a portion of the time he has resided in the United States he has not been eligible to apply for American citizenship. During the remainder of the time he has not chosen to do so. His allegiance remains, as it always has, with Greece. His designation as a representative of Greece to the United Nations is a strong indication of allegiance to that nation. He has maintained his strong ties with Greece through the operations there of the company which he controls.

Rhoditis sought to make much of the residence of Mr. Callimanopoulos in Connecticut as establishing New York as the base of operations for Hellenic Lines Limited. But this is contrary to the testimony at the trial. If the mind of Mr. Callimanopoulos be construed as the "base of operations" of Hellenic Lines, then it moves with Mr. Callimanopoulos to Connecticut and New York and Piraeus and London and elsewhere as Mr. Callimanopoulos moves. It is transitory and the law to be applied would be decided by the fortuitous circumstance of Mr. Callimanopoulos' whereabouts upon the happening of an injury. But the overwhelming evidence is that the home office of Hellenic Lines Limited is in Greece. There is an additional large office at New York and somewhat smaller ones in New Orleans and in Turkey; but Piraeus remains as the main or home base. A consideration of attendant factors will demonstrate the strong Greek ties of the corporate owner. All vessels call at Greece, all shipboard personnel are Greek, signed on in Greece pursuant to the Greek Collective Agreement, all contracts call for application of Greek law, all Board meetings are in Greece, all supplies possible are purchased in Greece and all repairs are made there. Of major significance is the fact that all trade routes operate from the Mediterranean, in and around Greece, some to U. S. ports, some not, but all to the vicinity of Greece. With respect, this is no flag of convenience but a bona fide Greek operation.

The residence of the majority stockholder, like the place of injury and the substantial commerce with U. S. ports is transitory and secondary and does not constitute such a counterweight as to overbalance the law of the bona fide Greek flag of this vessel.

It was suggested by counsel for Rhoditis below that, for some reason, Rhoditis might not now have available to him a remedy in the Greek courts and under the Greek

law. No evidence was adduced on the trial that would justify such a conclusion. Indeed, there are several rather cogent assurances that the Greek forum would be available to him. (1) The selfsame situation was faced by the seaman in the case from the Second Circuit which the Fifth Circuit declined to follow. **Tsakonites v. Trans Pacific Carriers Corp.** (2CA 1966), 368 F. 2d 426. Mr. Tsakonites found the Greek courts available to him to enforce his remedy under the laws of Greece following the dismissal of his action by United States courts. Attached to this brief, as Appendix I, is the decision actually entered by the Greek courts in the Tsakonites case. Mr. Rhoditis would have the very same forum available to him as did Mr. Tsakonites.

(2) Rhoditis has already received a portion of the benefits to which he is entitled, including the payment of his medical expenses and a part of the compensation due him, both pursuant to the laws of Greece (A. 76, 92-3). These he has accepted and retained. It would be strange were the Greek courts now to abandon Mr. Rhoditis in view of the partial relief which he has already enjoyed.

(3) The home office of Hellenic Line Limited, and its subsidiary companies, is in Piraeus, Greece, where it is subject to service and the jurisdiction of the Greek courts. Further, throughout the entire proceedings which are now before this Honorable Court, assurances have been made at each stage that Hellenic Lines Limited stands ready to respond to the jurisdiction and orders of the appropriate Greek forum, if such assurance or action be necessary.

(4) The courts of the United States are themselves available, as a matter of judicial discretion, to enforce the rights of Rhoditis under the Greek law should the Greek courts decline now to do so. In view of the history

of this case, it would seem a certainty that should the Greek courts decline to entertain the jurisdiction of Rhoditis' claim to completion, the courts of the United States would take jurisdiction, upon proper pleading, to enforce the benefits of the Greek law as it applies to this alien seaman.

These safeguards seem effectively to dispose of any contention that Rhoditis will now be without a remedy should American courts decline to apply the American law to his claim against his shipowner-employer. On the other hand, even were the courts of Greece inaccessible to Rhoditis, this would not be a basis for the application of American law to this dispute; but rather, for the exercise of discretionary jurisdiction by the court to enforce the rights granted to Rhoditis under the Greek law. *Lauritzen v. Larsen*, 345 U. S. 571, 589-90. But Mr. Rhoditis has never sought to enforce his rights under the Greek law in the courts of the United States. He did not plead nor did he seek to prove the benefits which Greek law conferred upon him under the circumstances of this case. Instead, he elected to proceed in toto on the assumption that American law applied.

Therefore, it is not of significance for Rhoditis' counsel to urge that he has no remedy under the Greek law. Such a conclusion is neither accurate nor pertinent.

It is apparent that the real thrust of almost five years' efforts to apply American law to a dispute between an alien seaman and his foreign shipowner employer is a hope of somewhat greater quantum of recovery under American law than Rhoditis would enjoy under the laws of Greece. However, the last paragraph of the *Lauritzen* opinion makes it clear that the prospect of greater recovery by virtue of the interposition of American law into this dispute does not, of itself, justify such an act. It is no basis either to oust the proper laws of another

flag, or, as would be the case here, to add onto the Greek remedy enjoyed by Rhoditis a cumulative remedy under American law. For, as in Lauritzen, this is not an "either-or" situation but rather an effort to give to the alien seaman a choice between laws of two nations as he finds most advantageous to him. Neither the decree of the District Court nor of the Court of Appeals purports to oust the Greek remedy available to Rhoditis and the others of the approximately 1100 Greek seamen employed by Hellenic Lines Limited. These decrees simply "add on" the Jones Act and thereby grant to the Greek seaman a cumulative remedy, placing the Greek seaman on the Greek flag vessels in a more favorable position than the American seaman for whose benefit the Jones Act was enacted. Since the Greek remedy is a type of compensation without regard to fault (plus punitive damages where fault exists) (A. 77-9, 92-3), the Greek seaman would then be in the enviable position of being able to elect as between the sure compensation type remedy of his homeland and the probably more lucrative rewards under the Jones Act and general maritime law of the United States, should there exist negligence or unseaworthiness.

With respect, there is no justification nor desirability to provide for a foreign seaman on a foreign flag vessel such a cumulative remedy.

IV

Since American law does not govern and Greek law was neither plead nor proven, there was no area of action for the court and the motion to dismiss should have been granted.

The proposition just stated summarizes the conclusion of the case of Tsakonites v. Trans Pacific Carriers Corp. and Hellenic Lines Limited, 368 F. 2d 426, cert. den. 386 U. S. 1007. As was recognized by the Fifth Circuit in the

instant case, the Tsakonites case reached a contrary result on identical facts. Both cases deal with a Greek citizen and resident who, while a seaman on an Hellenic Lines Limited vessel, was injured in an American port. The Second Circuit dismissed the action for the reasons summarized in Proposition V of this brief, whereas the Fifth Circuit declines to do so.

With respect, the decision by the Second Circuit, whose experience and prestige as an Admiralty forum are long and well recognized, is the sound one, represents established law as determined by the Supreme Court and should prevail over the differing result in the Fifth Circuit.

In Tsakonites the Second Circuit finds its answer to the matter in dispute squarely within the provisions of *Lauritzen v. Larsen* and declines to introduce any new or differing element. On the other hand, the Fifth Circuit in *Rhoditis* pushes beyond *Lauritzen* by piercing the corporate veil of the Greek owner and finding there a Greek citizen as majority stockholder, takes its departure from *Lauritzen* to equate residence with citizenship and concludes that the "ownership" is "essentially American." This destination is reached despite the total absence of any American citizen, either corporate or individual; despite the inability to make of this case a valid "flag of convenience" exception, and expressly by going outside and beyond the "seven talismen" of *Lauritzen*. It simply adds on an eighth element (base of operations or residence of major stockholder), and designates it as a third heavy counterweight sufficient to overcome the law of the flag.

Seemingly, this result is reached on the basis of the District Court opinion in the Second Circuit in *Pavlou v. Ocean Traders Marine Corp.*, 211 F. Supp. 320. This it does despite the fact that the Second Circuit in the *Tjoman v. A/S Glittre and Fearnley & Eger*, 340 F. 2d 290,

cert. den. 381 U. S. 925 (1965), relegated the **Pavlou** decision to those which mistakenly limit "the dominating importance of the law of the flag to cases with facts practically identical to the **Lauritzen case**". In **Tjonaman** the Second Circuit then went on the note to re-emphasis on the paramount importance of the law of the flag in the **McCulloch** case. Thus the effect of the **Pavlou** decision in the Second Circuit has been completely destroyed by **Tjonaman**, and, more recently, by **Tsakonites**.

Petitioner has, by diligent research, been unable to find any case at the Appellate level, other than **Rhoditis**, which has overturned the paramount effect of the law of the flag by any counterweight save American citizenship or residence of the seaman or American citizenship of the shipowner-employer. This is in accord with **Lauritzen** (1953) and **McCulloch** (1963). It remained the law when certiorari was denied in **Tjonaman** in 1965 and in **Tsakonites** in 1967.

With respect, the decision of the Second Circuit in **Tsakonites** is correct and the conflict between the circuits should be resolved in accordance with **Lauritzen v. Larsen** and with the **Tsakonites** decision in the Second Circuit.

SUMMARY OF ARGUMENT

Rhoditis is a citizen and resident of Greece who was injured aboard the **HELLENIC HERO**, a Greek flag vessel. Hellenic Lines Limited was the employer of **Rhoditis**, the operator of the vessel and the owner of all the capital stock of the shipowner corporation. All stockholders of Hellenic Lines Limited are Greek citizens and its home office is Greece.

The law to be applied under such circumstances is ordinarily and traditionally the law of the flag. Only when the seaman is an American citizen or resident or

when the owner of the vessel, either directly or indirectly, is an American citizen is there basis for departure from the law of the flag.

That Hellenic Lines Limited has substantial commerce in the United States, that its majority stock holder, while a Greek citizen, resides in the United States, or that the accident happened in New Orleans, is not sufficient to outweigh the law of the flag.

Since American law does not apply, and since the action below did not seek jurisdiction of the court for the purpose of applying the laws of Greece, they having been neither plead nor proven, the District Court had no area of operation and hence, should have dismissed the action upon motion.

Petitioner urges, with respect, that the opinion of the Court of Appeals be reversed and the cause be remanded with instructions that it be dismissed.

Respectfully submitted

GEORGE F. WOOD

510 Van Antwerp Building

P. O. Box 2245

Mobile, Alabama 36601

Attorney for Petitioners

APPENDIX I TO PETITIONER'S BRIEF

(Heading of Bureau of Traduction of Greece)

No. 10396

MAGISTRATES COURT OF THE PEACE
PIRAEUS
GREECE

Decision No. 631

**PROCEEDINGS OF THE MAGISTRATES COURT
OF THE PEACE**

Compromisory Agreement Under Act 551

In Piraeus this third day of the month of April in the year one thousand nine hundred and sixty-eight (April 3, 1968), Wednesday, 11:30 a. m., and at the Magistrates court of the peace before me ALEXANDROS PILINOS, Magistrate for the Peace, in the presence of the Clerk of the Court Spyridon Koumbousis, there appeared: 1) ELIAS TSAKONITIS, son of NICOLAOS, seaman, registered in the marine registers of the Mercantile Shipping under reg. serial No. 13763 holder of identity pass No. 15452 of 1968, of Piraeus, Odos Kountouriotou Street 149, accompanied by his counsel Elias Saghias, attorney-at-law of Piraeus, holder of identity pass No. 293/68 issued by the Lawyers Association of Piraeus, and 2) CONSTANTINOS IOANNIS ANDREOPoulos, barrister-at-law, resident of Piraeus, holder of license No. 32/1968 issued by the Lawyers Association of Piraeus, acting in the name and on the behalf of the Transpacific Carriers Corporation of Panama, duly represented in Greece shipowners of the merchant S/S Vessel HELLENIC SPIRIT.

Both the above named made each the following statement:

"I ELIAS TSAKONITIS hereby depose and state that under an Agreement dated June 4, 1959 for sea service signed at Piraeus, I signed for service on the above mentioned vessel in pursuance with the terms and conditions prescribed in the Collective Agreements Procedure in force in Greece and those which were included in the Agreement of Service. In fact, in compliance with the said Agreement of Service I left Piraeus and on June 5, 1959 I was registered for service at Iraklion, Crete on June 5, 1959. I continued to discharge my duties as member of the crew until September 26, 1959 while the vessel was anchored at the Port of New York for offloading. Going down the stairs leading to hold No. 3 I slipped and fell over on the wooden floors of the hold, hitting myself against the floor injuring my left hip. I was at once carried-off in an ambulance to the Lutheran Medical Centre of New York, dismissed from service as a member of the crew on account of an accident and remained under treatment on the expense of the shipowners. After the operation and the medical observation did not regain fitness and capacity to continue work but I became permanently partially unfit for work to an extent of 60%, and therefore I am entitled by law to an indemnity in accordance with the provisions prescribed under Act No. 551/1920 applying to labour accidents and casualties.

I further depose and state that during the time I served on board the said Vessel I was in receipt of monthly salary including overtime pay and other extra allowances amounting to £49.16.0 plus food rations in commodities estimated at £11.5.0. In other words, I was paid £61.1.0 per month corresponding to the salaries and emoluments drawn by members of the crew who were in the same scale of pay during the 12 months preceding the accident. On

that basis, I, am therefore entitled to receive an indemnity amounting to Drachmae 77,547 (seventy seven thousand five hundred and forty-seven) the shipowning company is responsible to pay to me in their capacity of owners and directors of the vessel I was serving during the accident."

The Attorney of the Shipowners, on the other hand, deposed and states as follows:—

"I, acting as the lawful attorney of the Shipowning Company hereby deny, dispute the veracity and oppose every point brought forward in the arguments and assertions of ELIAS TSAKONITIS on the grounds that the accident was chiefly due to his own fault and therefore the victim is entirely held responsible for his injury as a result of very serious negligence and unforgivable action that led to the accident, and moreover to his breach of the labour regulations and procedure applicable to carriers because he resorted to the Southern District Court of New York applying for indemnity. His application was finally turned down by the Court whereupon my Assignors reserve all rights under the law in connection with the considerable expenses they incurred in the form of cost of law and incidentals for the hearing entirely on the personal responsibility of the Plaintiff ELIAS TSAKONITIS. Furthermore, the partial incapacitation of the plaintiff resulting from the accident amounts only to 60% and not 20%. In any case, however, the amount of the incapacity for work as seaman did not make the plaintiff permanently unfit for work. Moreover in pursuance with the provisions prescribed in article 17 of Act 551/1920 the claim submitted by the plaintiff for indemnity as a result of an accident to him which occurred on September 26, 1959 is no longer valid and is written-off."

Claimant ELIAS TSAKONITIS opposed and raised objections to every point suggested by the Attorney of the Shipowning Company, more particularly as regards the

point of negligence on the part of the Claimant or the nature of his incapacity asserting to be for permanent character but partial to the degree of 60% acknowledged as such by the competent Medical Board of the Marine Veterans Social Insurance Fund, which, on these grounds, granted to him a pension allowance. Finally, the Claimant took objection to the invalidation and writing-off of his claim because according to the decision of the Supreme Court of Justice AREIOS PAGOS under decree No. 066 of 1966 published in the Legal Tribune page 1006 of 1966 claim for the writing-off of a lawful claim under the provisions prescribed in Act 551/1920, may be written-off after the lapse of 20 years similar to the period set down in connection with ordinary claims applicable to accidents to workers at sea. On the other hand the attorney of the Shipowners declared that all the points he submitted to Court are grounded on the point of the law and cannot stand any objection or opposition or could they be influenced or weakened from the assertions of ELIAS TSAKONITIS, however, to save time and to avoid further judicial proceedings, disputes and contentions and all legal entanglements, costs of law and incidentals, is prepared to accept and hereby accepts to settle forthwith the entire indemnity demanded by the Claimant ELIAS TSAKONITIS, and, hereby offers to pay to the Claimant the sum of Drachmae 77,547 (seventy-seven thousand five hundred and forty-seven) in full settlement of his claim.

Now, inasmuch as both Parties jointly requested the Court to approve and to allow the compromisory agreement and settlement of the indemnity.

Whereupon the Magistrate of the Peace issued his reasoning and decision reading as follows:—

“WE, Magistrate of the Peace, having taken into consideration that Settlement of the Indemnity requested by the Parties concerned does not conflict with the

provisions prescribed in article 14 of Act 551/1920 as now amended, have approved and allowed the compromisory agreement between the Parties concerned and its full settlement."

At this juncture CONSTANTINOS ANDREOPoulos in his capacity of attorney of the Shipowners counted and paid in my presence to ELIAS TSAKONITIS the sum of Drachmae 77,547 (seventy-seven thousand seven hundred and forty-seven Drachmae), collected as cash money by the Claimant ELIAS TSAKONITIS in the presence of his Counsel ELIAS SAGHIAS, Barrister-at-law, stating and acknowledging at the same time that his client ELIAS TSAKONITIS accepts the payment made and admits that he is entirely and completely satisfied and compensated, dismissing any other claim whatsoever of his Client from the TRANSPACIFIC CARRIERS CORPORATION owners and directors of the carrier HELLENIC SPIRIT of Panama, or from the Shipping Company "I ELLINIKA", the Shipping Agents and the Agents of the Carrier Vessel, the Master, officers, the crew of the vessel, the Insurance Agents and any other duly qualified representative or agent of the HELLENIC SPIRIT in connection with the accident he had while serving on board the said Carrier either under the provisions of Art. 551/2 of Act 3816/58 regarding procedure under the Private Mercantile Law or under any other provision of the Civil Law and Procedure and of any procedure and law provided in the Greek Law and Procedure or in any foreign Law and Procedure, particularly that of the United States of America in connection with any capital of money, interest thereon, costs, claim or demand raised by him for moral damages, compensation or other claim arising from the same cause and he, the Claimant, retains no other claim, demand or rights whatsoever on account of the same cause or reason either directly or indirectly. To the above statement made by his attorney the Claimant ELIAS TSAKO-

NITIS stated and deposed that none of the persons named here-above severally or jointly are to be held responsible or answerable regarding the accident which is entirely due to his own carelessness and negligence and not to any mechanic defect or to the absence of any necessary spare part of the vessel or of the machine installations or to any fault, failure, neglect, action or omission on the part of the Master, the Officers, the Boatswain, the members of the crew, or the shipowners and managers of the Shipping Company including their Seniors and Superintendents. Finally the Claimant abandons all and any right or rights whatsoever and claims against any person or persons whomsoever, or legal entities or corporations for repairs and indemnity as a result of moral injury.

On the other hand, CONSTANTINOS ANDREPOULOS in his capacity of duly commissioned attorney acting on the behalf and in the name of the TRANSPACIFIC CARRIERS CORPORATION, hereby deposed and stated that he acknowledges and accepts all and every statement, declaration, admissions, dismissals and discharges made by ELIAS TSAKONITIS in our presence. Finally, ELIAS TSAKONITIS and his Counsel ELIAS SAGHIAS, Barrister-at-law on the one hand and, CONSTANTINOS ANDREPOULOS in his capacity of attorney of the Shipowners made a joint statement deposing that they acknowledged and accepted all and every point described hereabove, and jointly declared that they freely and without any reservation whatsoever abandon any right of opposing the terms of the agreement described herein both on the grounds of the law or on the merits of the case. More particularly, ELIAS SAGHIAS hereby states that he abandons all rights described in the Labour Agreement and concession.

In testimony whereof these present minutes of the proceedings were drafted and read clearly and distinctly to the hearing of all present, confirmed and duly signed by all present and by me Magistrate of the Peace.

Costs of law and stamp duty Drachmae 931.20 were paid by the Shipowners as attested from receipt voucher No. 18331/68 signed by the Collector of Public Revenue.

Sgd: Elias Tsakonitis, Deponent

E. Saghias, Deponent

C. Andreopoulos, Deponent

Sgd: A. Plinos, Magistrate

S. Koumbousi, Clerk

Sgd: Clerk

Certified true and official transcript.

Official seal

Sgd: E. Dialynas, President
Court of the First Instance

Certified signature authentic.

Piraeus, April 11, 1968

Official seal

Certified signature authentic of the Pres. Court of 1st Inst.
Piraeus.

Athens, April 11, 1968

Official seal

Sgd: N. Krios, Section Chief
Ministry of Justice

Certified true translation

April 16, 1968

(Illegible)

S. P. Carnapas